

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NOS. 4683 & 24521 OF 1997

Between:

- 1 T.Rama Swamy, S/o. Appanna,
R/o. Dummagudem Mandal, Khammam District.
- 2 P.Visweswara Rao, S/o. Jagannadham,
R/o. Kothapet, Bhadrachalam, Khammam Dist.

..... PETITIONERS

AND

- 1 The District Collector (Co-operation) Khammam District,
Khammam.
- 2 The District Co-Operative Officer, Khammam,
Khammam .
- 3 The Divisional Co-Operative Officer, Bhadrachalam Division,
Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned proceedings in Rc. No. 48/85-C dated 18-3-92 on the file of the 1st respondent herein and set aside the same as illegal, arbitrary and without jurisdiction on part of the 1st respondent herein and violative of Principles of natural justice apart from violative of Article 21 of the Constitution of India and also contrary to the provisions of the A.P. Cooperative Societies Act.

Counsel for the Petitioners: MR.A.SATYA PRASAD

Counsel for the Respondents: GP FOR COOPERATION

AND

WRIT PETITION NO : 24521 of 1997

Between:

T.Ramaswamy, S/o. Appanna,
R/o. Dummagudem Village (Mdl), Khammam District.

..... PETITIONER

AND

- 1 The Govt. of Andhra Pradesh, rep by its Secretary,
Home Department, Secretariat Buildings,
Hyderabad.
- 2 The Superintendent of Police,
Khammam, Khammam District
- 3 The Circle Inspector of Police, Venkatapuram Circle
Police Station, Khammam District.
- 4 The Sub- Inspector of Police, Dummagudem Police Station,
Dummagudem Mandal, Khammam District.
- 5 Mr. Ilaiyah, S/o Not Known to the petitioner,
Circle, Khammam District
- 6 Mr. Ramesh, S/o. Not Known to the petitioner,
Dummagudem Police Station, Khammam Dist.
- 7 The District Collector, Khammam District, Khammam.
(R7 is impleaded as party respondent vide order of Court dt. 25-9-1997)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the impugned action of the 5th & 6th Respondents in their capacity of 3rd and 4th respondents in proceeding with the execution of the orders passed by the District Collector, vide proceedings Rc.No. 48/85-C dated 18.3.1992 through the said orders were suspended by this Hon'ble Court as highly illegal, arbitrary and violative of Article 14 & 21 of the Constitution of India and consequently direct them to drop entire action in pursuance of the orders of the District Collector, Khammam District, Dated 18.3.1992.

Counsel for the Petitioner: MR. A. SATYA PRASAD

Counsel for the Respondent No.1 to 4: GP FOR HOME

The Court made the following:

COMMON ORDER:

The petitioners, who are two in number, have filed the writ petition in W.P. No. 4683 of 1997 (hereinafter referred to as 'the first writ petition'), assailing the proceedings in Rc.No.48/85-C, dated 18.03.1992, issued by the District Collector (Co-Operation), Khammam District, as illegal and arbitrary, and consequently to set-aside the same. While petitioner No.1 in the first writ petition filed W.P.No.24521 of 1997 (hereinafter referred to as 'the second writ petition') to declare the action of the Circle Inspector of police, Venkatapuram Police Station and the Sub-Inspector of Police, Dummagudem Police Station, Khammam District respectively, in proceeding to execute the orders of the District Collector, assailed in the first writ petition, despite the same having been suspended by this Court, pending disposal of the first writ petition, as illegal and arbitrary, and consequently to direct them to drop the entire action taken in pursuance of the orders of the District Collector, Khammam District.

Inasmuch as both the writ petitions are inter-connected, they are being disposed of by this common order. For the sake of convenience, the parties shall be referred to as referred to in the first writ petition.

The first petitioner was initially appointed as Clerk in Dummagudem PACS, and later was promoted as Secretary, and was posted as Additional Secretary in the very same society. The second petitioner is the Co-Operative Sub Registrar in the Office of the District Co-Operative Officer, Khammam District. While they were working as such, an inspection was conducted in respect of the Dummagudem PACS, wherein it was found that the records and furniture were missing, and a report to that effect was submitted. Respondent No.3, namely the Divisional Co-operative Officer, Bhadrachalam Division, Khammam District, who was appointed as Enquiry Officer, conducted an enquiry, as contemplated under Section-51 of the A.P. Co-Operative Societies Act, 1964, and sent a report recommending recovery of Rs.38,000/- from both the first and second petitioners. The petitioners state that respondent No.3 while conducting the enquiry, did not take into account the panchanama

report, and merely based on other material, recommended recovery of the amount from the petitioners. Based on the said report, the petitioners state that respondent No.3 passed a surcharge order dated 13.08.1987, which they assailed in appeal in C.M.A. No.19 of 1987 on the file of the Co-Operative Tribunal, and obtained interim suspension thereof. As they obtained stay of the orders, the petitioner state that respondent No.3 bore grudge against them, and directed the then President of the PACS to keep the first petitioner under suspension, which the first petitioner states, was revoked in pursuance of the directions of this Court in W.P.No.10536 of 1988, dated 25.08.1989. While the facts remain thus, the petitioners state that respondent No.1, issued the proceedings dated 18.03.1992 according sanction for prosecution of the petitioners, which the petitioners contend, is without power, illegal and arbitrary.

The learned counsel for the petitioner submits that the either under the A.P. Co-operative Societies Act, 1964 or the Rules made thereunder, respondent No.1 has any power to accord sanction for launching criminal prosecution against an employee of the society, and as such, the impugned order dated 18.03.1992, passed by respondent No.1 according sanction to launch prosecution against the petitioners, and instructing the Divisional Co-Operative Officer, Bhadrachalam, to file a criminal complaint against the petitioners, for alleged misappropriation of the money of the society, cannot be sustained. He further submitted that respondent No.1 is delegated with the powers of the Registrar only under certain provisions like appointment of Election Officer, supervision of the Committees etc., but he has no power whatsoever to order and sanction the prosecution of the petitioners, who are employees of the society. He further submitted that question whether the District Collector has the power to order and sanction prosecution of an employee of a co-operative society was considered by this Court in W.P. No. 3887 of 2001, dated 08.03.2001 and W.P. No. 9736 of 1997, dated 15.02.2005, and it was held that the District Collector is not conferred with such a power. He further submitted that inasmuch as the

proceedings of respondent No.1, assailed in the first writ petition were stayed by this Court in the first writ petition, the action of the Circle Inspector of Police, Venkatapuram Circle Police Station and the Sub-Inspector of Police, Dummagudem Police Station, in proceeding to execute the orders of respondent No.1, is illegal.

The learned Government Pleader for Co-operation conceded that the District Collector is not conferred with the power to order and sanction prosecution of an employee of a co-operative society.

A learned single Judge of this Court in W.P.No.3887 of 2001, had already considered the question raised in this writ petition, namely whether the District Collector under Section 83(b) of the A.P. Co-operative Societies Act, 1964 is empowered to order and sanction prosecution of an employee of a co-operative society, and by his order dated 08.03.2001, he held thus:

“Learned Government Pleader for Co-Operation submits that the first respondent is not conferred with the jurisdiction and power to sanction for the prosecution of the Paid Secretaries in the Society. In the circumstances, the Court is left with no option except to set-aside the impugned proceedings. The impugned proceedings suffer from jurisdictional errors. No doubt, the allegations levelled against the petitioner are serious in nature, but the Court cannot uphold the order passed by an authority which has no jurisdiction in law to pass such an order. The impugned order is accordingly, set aside.”

Following the above judgment, a Division Bench of this Court, vide its order dated 22-1-2003, allowed similar writ petition in W.P. No. 13878 of 1998. A learned single Judge, very recently by his judgment dated 15-2-2005, allowed a similar writ petition in W.P. No.9736 of 1997, by following the aforesaid judgments.

Inasmuch as the law has been already settled that the District Collector under Section 83(b) of the A.P. Co-operative Societies Act, 1964 is not conferred with the jurisdiction and power to order and sanction prosecution of an employee of a co-operative society, the impugned proceedings issued by the District Collector, instructing the

Divisional Co-operative Officer, to file criminal case against the petitioners, cannot be sustained, and it is accordingly quashed and set aside.

Accordingly, the writ petition in W.P. No. 4683 of 1997 is allowed. This order, however, shall not preclude the authorities concerned to initiate appropriate action against the petitioners herein in accordance with law.

In view of the orders passed in W.P. No. 4683 of 1997, allowing the writ petition and setting aside the orders impugned therein, no orders need be passed in the writ petition in W.P.

No. 24521 of 1997. Accordingly, the same is closed. No order as to costs.

08.04.2005

dr/tvk

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That Rule nisi has been made absolute.

Witness the Hon'ble Sri Bilal Nazki, Acting Chief Justice, on this Friday the eighth day of April, Two thousand and five.

To

- 1 The District Collector (Co-operation) Khammam District, Khammam.
- 2 The District Co-Operative Officer, Khammam, Khammam .
- 3 The Divisional Co-Operative Officer, Bhadrachalam Division, Khammam District.
- 4 The Secretary, Govt. of Andhra Pradesh, Home Department, Secretariat Buildings, Hyderabad.
- 5 The Superintendent of Police, Khammam, Khammam District
- 6 The Circle Inspector of Police, Venkatapuram Circle Police Station, Khammam District.
- 7 The Sub- Inspector of Police, Dummagudem Police Station, Dummagudem Mandal, Khammam District.
- 8 The District Collector, Khammam District, Khammam.
- 9 2 CCs to Government Pleader for Co-operation,

High Court Buildings, Hyderabad. (OUT)

10 2 CCs to Government Pleader for Home,

High Court Buildings, Hyderabad. (OUT)

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